

JUL 20 2009

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

MUR 6129

American Resort Development Association
Resort Owners Coalition PAC and
Sandra Yartin DePoy, in her official capacity
as treasurer

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COMMISSION

GENERAL COUNSEL'S REPORT #2

I. ACTIONS RECOMMENDED:

(1) Make additional reason to believe findings that American Resort Development Association Resort Owners Coalition PAC and Sandra Yartin DePoy, in her official capacity as treasurer violated 2 U.S.C. §§ 434(b), 441b(a), and 441e(a); (2) enter into in pre-probable cause conciliation with the American Resort Development Association Resort Owners Coalition PAC and Sandra Yartin DePoy, in her official capacity as treasurer; (3)

(4) approve the attached Factual and Legal Analysis; and (5) approve the appropriate letters.

II. BACKGROUND

On November 7, 2008, the Commission found reason to believe that the American Resort Development Association Resort Owners Coalition PAC and Sandra Yartin DePoy, in her official capacity as treasurer, ("Respondent" or "Committee") violated: (1) 2 U.S.C. § 434(b) by misstating its financial activity for 2003 and 2004; (2) 2 U.S.C. § 441b(a) by knowingly accepting contributions prohibited by 2 U.S.C. § 441b; (3) 2 U.S.C. § 441e(a) by knowingly accepting contributions prohibited by 2 U.S.C. § 441e; and (4) 2 U.S.C. § 441b(b)(3)(B)-(C) and 11 C.F.R. § 114.5(a)(5) by failing to include the required information on the Committee's solicitations. In 2003, the Respondent misstated its receipts by \$797,501 and its disbursements

1 by \$580,181 and also misstated its receipts by \$519,028 and its disbursements by \$1,279,485 in
2 2004. Additionally, the Respondent received prohibited corporate and foreign national
3 contributions from individual timeshare owners who contributed between \$3 and \$5 to the
4 Committee when they paid their timeshare fees. The Respondent has admitted that these
5 prohibited contributions were a result of failing to examine the source of these contributions.
6 Finally, the Respondent failed to include the information required about the voluntariness of the
7 contributions on its solicitations. In addition to finding reason to believe that the Respondent
8 committed these violations, the Commission also authorized pre-probable cause conciliation
9 with the Respondent

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III. ANALYSIS

The Respondent has represented that the underlying problems that caused the violations of the Act that were addressed in the Final Audit Report continued during 2005, 2006, and 2007. The Respondent has admitted that it has committed additional violations of the Act, including both the continued misstatement of financial activity and the continued acceptance of prohibited foreign national and corporate contributions, during those years as a result of these problems. Because the Respondent has admitted these violations, we recommend that the Commission find reason to believe that American Resort Development Association Resort Owners Coalition PAC and Sandra Yartin DePoy, in her official capacity as treasurer, violated 2 U.S.C. §§ 434(b), 441b, and 441e during 2005, 2006, and 2007.

A. Additional Reporting Violations

After receiving notice of the Commission's reason-to-believe finding, the Respondent notified us that the same administrative problem that had caused it to misstate its receipts and disbursements during 2003 and 2004 had led to additional reporting errors in 2005, 2006, and 2007. Specifically, the Respondent claims that its misstatements were due principally to a failure to understand the requirement to disclose all of its disbursements, not just contributions to federal candidates. To remedy these errors, the Respondent retained Democracy Data and Communications, LLC, a PAC management and compliance firm, on January 1, 2006, to complete all of the Respondent's future reports. In addition, the Respondent

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1 has severed ties with the employee who had principal responsibility for recordkeeping and
2 reporting.

3 Finally, to remedy its misstatements of financial activity, the Respondent amended each
4 of its periodic reports with the Commission for 2005, 2006, and 2007. At our request, the
5 Reports Analysis Division reviewed each of these reports :

6 Specifically, these
7 amended reports included (1) an increase of \$428,756.60 in disbursements reflected in the
8 Respondent's 2006 July Quarterly Report; (2) an increase in disbursements of \$183,785.87 for
9 the Committee's amended 2006 30-Day Post-General Report; and (3) a cash-on-hand
10 discrepancy of \$246,673 for the Committee's amended 2008 February Monthly report that was
11 caused by the amended 2007 Year End Report. Because the Respondent misstated its financial
12 activity by reporting an increase in activity for two reports in 2006 and one report in 2008, we
13 recommend that the Commission make additional reason to believe findings that the American
14 Resort Development Association Resort Owner Coalition PAC and Sandra Yartin DePoy, in her
15 official capacity as treasurer, violated 2 U.S.C. § 434(b).

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B. Additional Receipt of Prohibited Foreign National and Corporate Contributions

The Respondent has stated that the same administrative problems that caused it to receive prohibited foreign national and corporate contributions during the 2004 election cycle persisted until the end of 2007. Counsel has represented that, prior to the Commission audit, the Respondent was unaware that it may have been receiving prohibited foreign national and corporate contributions. Since becoming aware of its acceptance of these prohibited contributions through the audit, the Respondent has implemented several preventative measures. First, the Respondent has sent notice to its collecting agents that its solicitations must include a disclaimer that foreign national contributions are prohibited. Second, the Respondent has ceased soliciting contributions altogether from one association run by the Marriot in Aruba because the membership of this association contained a very high percentage of foreign nationals. Finally, the Respondent has developed a program that will screen the addresses of the various resorts and homeowner associations and prevent a solicitation from being sent to any foreign address on file.

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The audit discovered that 7.8% of the receipts reviewed during the 2003 and 2004 calendar years were from either prohibited corporate or foreign national contributions. Of this 7.8% of prohibited receipts, 1.4% of that total percentage was from corporate sources and 6.4% was from foreign nationals. These error rates are used to determine the total amount of prohibited contributions in Table 1.

TABLE 1:
ESTIMATED PROHIBITED CONTRIBUTIONS

Year	Total Unitemized Receipts	Percentage of Receipts that violate 441b	Total Projected 441b Violations
2005	\$1,876,289.00	1.40%	\$26,268.06
2006	\$1,735,919.60	1.40%	\$24,302.87
2007	\$2,334,774.25	1.40%	\$32,686.84
Total	\$5,946,982.85	1.40%	\$83,257.76
Year	Total Unitemized Receipts	Percentage of Receipts that violate 441e	Total Projected 441e Violations
2005	\$1,876,289.00	6.40%	\$120,082.50
2006	\$1,735,919.60	6.40%	\$111,098.85
2007	\$2,334,774.25	6.40%	\$149,425.55
Total	\$5,946,982.85	6.40%	\$380,606.90

Using the error rate discovered during the 2004 cycle audit, it appears that the Respondent may have received a total of at least \$83,257 in prohibited corporate contributions and \$380,606 in prohibited foreign national contributions in the 2005 through 2007 period. See Table 1, *infra*. As there were no corrective measures in place during the later period, the error rate discovered for the 2004 cycle is a reasonable estimate for the later period. We therefore recommend that the Commission make additional reason to believe findings that the American Resort Development Association Resort Owners Coalition PAC and Sandra Yartin DePoy, in her official capacity, violated 2 U.S.C. §§ 441b and 441e by knowingly receiving prohibited corporate and foreign national contributions.

IV. DISCUSSION OF CONCILIATION PROVISIONS AND CIVIL PENALTY

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V. RECOMMENDATIONS

1. Find reason to believe that American Resort Development Association Resort Owners Coalition PAC and Sandra Yartin DePoy, in her official capacity as treasurer, violated 2 U.S.C. §§ 434(b), 441b(a), and 441e(a).
2. Enter into conciliation with American Resort Development Association Resort Owners Coalition PAC and Sandra Yartin DePoy, in her official capacity as treasurer prior to a finding of probable cause to believe.
3. Approve the attached Factual and Legal Analysis.
- 4.
5. Approve the appropriate letters.

Thomasenia P. Duncan
General Counsel

7/20/09
Date

BY: Stephen Gura
Stephen Gura
Deputy Associate General Counsel
for Enforcement

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Attachments

1. Factual and Legal Analysis
- 2.